

APPEAL NO. 040412  
FILED APRIL 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 29, 2004. The hearing officer determined that the appellant (carrier 1) does not have standing as a subclaimant in accordance with Section 409.009, and that carrier 1 is not entitled to reimbursement under the 1989 Act from respondent 1 (carrier 2) for benefits paid. Carrier 1 appealed the hearing officer's determinations, arguing that it is a subclaimant under Section 409.009 and that it is entitled to reimbursement from carrier 2. Carrier 2 responded, urging affirmance. The appeal file does not contain a response from respondent 2 (claimant).

DECISION

Affirmed.

The facts of this case are relatively brief and the dispute is between two carriers. The evidence reflects that carrier 1 insured the employer for the policy period from December 1, 2001, through December 1, 2002. On February 7, 2002, the employer cancelled the insurance policy with carrier 1, and obtained another insurance policy with carrier 2. The cancellation with carrier 1 was effective as of the inception date, December 1, 2001, and the full premium was returned to the employer. The claimant sustained an injury on \_\_\_\_\_. Carrier 1 had paid \$44,857 in indemnity and \$45,563 in medical benefits on this claim as of the date of the hearing. It is undisputed that on \_\_\_\_\_, the employer was insured by carrier 2, and was not insured by carrier 1. At the CCH, carrier 1 argued that it has standing as a subclaimant under Section 409.009 and that it is entitled to reimbursement from carrier 2.

Carrier 1 contends that it has met both requirements under Section 409.009 to qualify as a subclaimant. Section 409.009 provides that a person may file a written claim with the Texas Workers' Compensation Commission (Commission) as a subclaimant if the person has provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and sought and been refused reimbursement from the insurance carrier. Carrier 1 contends that it is a "person" within the meaning of Section 409.009. Pursuant to the Texas Government Code § 311.005(2), the term "person" includes "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." Carrier 1 argues that it is a corporation or other legal entity, and therefore it meets the definition of "person" under Section 409.009. Carrier 1 contends that it has standing as a subclaimant under Section 409.009.

Assuming, *arguendo*, that carrier 1 is a subclaimant under Section 409.009, the Commission is without authority to determine whether carrier 1 is entitled to

reimbursement from carrier 2 for benefits paid. Pursuant to Section 410.002 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 140.1(1) and (2) (Rule 140.1(1) and (2)) the Hearings Division is given the authority to resolve benefits disputes, which are defined as a dispute regarding compensability or eligibility for, or the amount of, income or death benefits. In this instance, there is simply no benefit dispute presented. Rather, carrier 1 is asking the Commission to order carrier 2 to reimburse it for benefits it mistakenly paid to the claimant for an injury where it did not provide coverage. Carrier 1 has not pointed to any provision in the 1989 Act that authorizes the Commission to award reimbursement in this situation. In addition, it does not appear that this case is covered by the reimbursement provisions of the 1989 Act contained in Sections 410.033 and 410.209, in that the payment was not made pursuant to an interlocutory order or Commission decision. As such, we note that in this case, as in Texas Workers' Compensation Commission Appeal No. 992012, decided November 4, 1999, we simply do not have either the express or implied authority to grant carrier 1 the relief it seeks.

The hearing officer's decision and order are affirmed.

The true corporate name of insurance carrier 1 is **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

The true corporate name of insurance carrier 2 is **ALL AMERICA INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CHARLES WAHL WASSBERG  
7301 NORTH STATE HIGHWAY 161, SUITE 320  
IRVING, TEXAS 75039.**

---

Veronica L. Ruberto  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Chris Cowan  
Appeals Judge